BILL NO. G-74-03-35

# GENERAL ORDINANCE NO. G- 07-74

AN ORDINANCE prohibiting the Distribution of exhibition of Obscene Matter or Performancaes

BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF FORT WAYNE, INDIANA:

SECTION 1. Obscend Matters and Performances

### For purpose of this Ordinance:

- (a) "Matter" means any book magazine, newspaper, or printed or written material or any picture, drawing, photograph, motion picture, or other pictorial representation or any statue or other figure, or any recording, transcription, or mechanical, chemical or electrical reproduction or any other articles, equipment, machines or materials.
- (b) "Performance" means any play, motion picture, dance or other exhibition or presentation, whether pictured, animated or live, performed before an audience of one or more persons.
- (c) Any matter or performance is obscene if: (i) the average person, applying contemporary community standards, finds that the matter of performance taken as a whole, appeals to the prurient interest, and (ii) the matter of performance depicts or describes in a patently offensive way, sexual conductions or perverted, actual or simulated, and (iii) the matter or performance takes a whole, lacks serious literary, artistic, political or scientific value.
- (d) "Sexual conduct" means acts of masturbation, excretory functions, lewd exhibition of the genitals, sadomasochistic abuse, homosexuality, lesbianish beastiality, sexual intercourse or physical contact with a person's clothed or unclothed genitals, pubic area, buttocks, or the breast or breasts of a female for the purpose of sexual stimulation, gratification, or perversion.
- (e) "Sado-masochistic abuse" means flagellation or torture by or upon a person as an act of sexual stimulation or gratification.
- (f) "Person" means any individual, partnership, firm, association, corporation or other legal entity.
- (g) "Distribute" means to transfer possession of, whether with or without consideration.

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- (h) "Knowingly" means knowing or having good reason to know or hav≠ing such constructive knowlege as would constitute knowing, the character of the matter or performance.
- (i) "Owner" means any person who owns or has legal right to possession of any matter.
  - (i) "City" means City of Fort Wayne, Indiana.

SECTION 2. Every person who knowingly sends or causes to be sent, or brings or causes to be brought, into the City for sale or distribution, or in this City possesses, prepares, publishes or prints, with intent to distribute or to exhibit to another, or who offers to distribute, distributes, or exhibits to another any obscene matter is guilty of a misdemenaor.

SECTION 3. Every person who knowingly engages or participates in, manages, produces, sponsors, presents or exhibits any obscene performance is guilty of a misdemeanor.

SECTION 4. Defenses. It shall be an affirmative defense to a prosecution under this Ordinance for the defendant to show:

(a) That the act was done for legitimate scientific or educational purposes;

SECTION 5. Where the subject matter is offered for distribution to the public as stock in trade or a lawful business or activity, or as in the case of films, is exhibited at a commercial theater showing regularly scheduled performance to the general public, no person shall be arrested for a violation of any of the provisions of the Ordinance unless the arresting officer shall have first obtained arrest warrant, and no property shall be seized as evidence unless a search warrant shall have first been obtained pursuant to the provisions of this chapter; Provided, however, that the quantity of matter seized shall encompass no more than is reasonable and necessary for the purpose of obtaining evidence.

SECTION 6 At any time after seizure, or the obtaining of evidence by purchase, and prior to arrest, the City, defendant, owner, or other party in interest of any matter seized or purchased may apply for and obtain a prompt adversary hearing for the purpose of obtaining a preliminary determination of obscenity. Said hearing for preliminary determination of obscenity is to be held promptly and without the intervention of a jury, said restriction applying only to the preliminary determination and in no way affecting the defendant's right to a jury trial. If evidence has been obtained by purchase, the court shall direct the clerk of the court to issue notice to the defendant informing the person of the availability of a prompt adversary hearing prior to the issuance of a warrant of arrest. If the court determines at a said hearing that the material is obscene, the matter shall be held as evidence and a warrant of arrest may be issued for the arrest of the defendant. Provided, further, if the defendant,

owner or other party in interest of any matter seized or purchased shall not apply for a prompt adversary hearing within five (5) days after the seizure occurs or when seven (7) days after notice is issued by the court, an arrest warrant may be issued for the arrest of the defendant. In the case of films or motion pictures, at any time after seizure and prior to trial or any adversary hearing for the purpose of obtaining a preliminary determination of obscenity, the defendant or owner of any matter seized may apply for and, upon a showing that other copies of the film or motion picture are not available to be exhibited, the court shall order that the applicant be permitted to copy the film or picture, at his own expense, so that showing can be continued pending a judicial determination of obscenity in an adversary hearing.

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SECTION 7. Any person who violates any of the provisions of this Ordinance shall be guilty of a misdemeanor, and shall upon conviction, be fined in any amount not to exceed One Thousand Dollars (1,000.00) and, may be imprisoned for any period not to exceed six (6) months.

SECTION 8. If any provision or clause of the Ordinance, or its application to any person or circumstance is held invalid, the invalidity does not affect other provisons or applications, of this ordinance and to this end the provisions of each section are declared to be severable.

SECTION 9. This Ordinance shall be in full force and effect from and after its passage, approval by the Mayor and legal publication thereof.

Winfield C. Moses, Jr. Councilman

BILL NO. G-74-03-35

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ORDINANCE NO. G-74-

AN ORDINANCE prohibiting the Distribution of exhibition of Obscene Matter or Performances

BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF FORT WAYNE, INDIANA:

SECTION 1. Obscene Matters and Performances.

For purpose of this Ordinance:

- (a) "Matter" means any book, magazine, newspaper, or printed or written material or any picture, drawing, photograph, motion picutre, or other pictorial representation or any statue or other figure, or any recording, transcription, or mechanical, chemical or electrical reproduction or any other articles, equipment, machines or materials.
- (b) "Performance" means any play, motion picture, dance or other exhibition or presentation, whether pictured, animated or live, performed before an audience of one or more persons.
- (c) Any matter or performance is obscene if: (i) the average person, applying contemporary community standards, finds that the matter of performance taken as a whole, appeals to the prurient interest, and (ii) the matter of performance depicts or describes in a patently offensive way, sexual condut, normal or perverted, actual or simulated, and (iii) the matter or performance taken as a whole, lacks serious literary, artistic, political or scientific value.
- (d) "Sexual conduct" means acts of masturbation, excretory functions, lewd exhibition of the genitals, sadomasochistic abuse, homosexuality, lesbianism, beastiality, sexual intercourse or physical contact with a person's clothed or unclothed genitals, pubic area, buttocks, or the breast or breasts of a female for the purpose of sexual stimulation, gratification, or perversion.
- (e) "Sado-masochistic abuse" means flagellation or torture by or upon a person as an act of sexual stimulation or gratification.
- (f) "Person" means any individual, partnership, firm, association, corporation or other legal entity.
- (g) "Distribute" means to transfer possession of, whether with or without consideration.
- (h) "Knowlingly" means knowing or having good reason to know or having such constructive knowledge and would constitute knowing, the character of the matter or performance.
- (i) "Owner" means any person who owns or has legal right to possession of any matter.
  - (j) "City" means City of Fort Wayne, Indiana.

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SECTION 2. Every person who knowingly sends or causes to be sent, or brings or causes to be brought, into this City for sale or distribution, or in this City possesses, prepares, publishes or prints, with intent to distribute or to exhibit to another, or who offers to distribute, distributes, or exhibits to another any obscene matter is guilty of a misdemeanor.

SECTION 3. Every person who knowlingly engages or participates in, manages, produces, sponsors, presents or exhibits any obscene performance is guilty of a misdemeanor.

SECTION 4. Defenses. It shall be an affirmative defense to a prosecution under this chapter for the defendant to show:

(a) That the act was done for legitimate scientific or educational purposes;

SECTION 5. Where the subject matter is offered for distribution to the public as stock in trade or a lawful business or activity, or as in the case of films, is exhibited at a commercial theater showing regularly scheduled performance to the general public, no person shall be arrested for a violation of any of the provisions of this chapter unless the arresting officer shall have first obtained an arrest warrant, and no property shall be seized as evidence unless a search warrant shall have first been obtained pursuant to the provisions of this chapter; Provided, however, that the quantity of matter seized shall encompass no more than is reasonable and necessary for the purpose of obtaining evidence.

SECTION 6. At any time after seizure, or the obtaining of evidence by purchase, and prior to arrest, the City, defendant, owner, or other party in interest of any matter seized or purchased, may apply for and obtain a prompt adversary hearing for the purpose of obtaining a preliminary determination of obscenity. Said hearing for preliminary determination of obscenity is to be held promptly and without the intervention of a jury, said restriction applying only to the preliminary determination and in no way affecting the defendant's right to a jury trial. If evidence has been obtained by purchase, the court shall direct the clerk of the court to issue notice to the defendant informing the person of the availability of a prompt adversary hearing prior to the issuance of a warrant of arrest. If the court determines at said hearing that the material is obscene, the matter shall be held as evidence and a warrant of arrest may be issued for the arrest of the defendant. Provided, further, if the defendant, owner or other party in interest of any matter seized or purchased shall not apply for a prompt adversary hearing within five (5) days after the seizure occurs or within seven (7) days after notice is issued by the court, an arrest warrant may be issued for the arrest of the defendant. In the case of films or motion picutres, at any time after seizure and prior to trial or any adversary hearing for the purpose of obtaining a preliminary determination of obscenity, the defendant or owner of any matter seized may apply for and, upon a showing that other copies of the film or motion picutre are not available to be exhibited, the court shall order that the applicant be permitted to copy the film or motion picutre, at his own expense, so that showing can be continued pending a judicial determination of obscenity in an adversary hearing.

SECTION 7. Any person who violates any of the provisions of this Chapter shall be guilty of a misdemeanor, and shall upon conviction, be fined in any amount not to exceed Five Hundred Dollars (\$500.00) and, may be imprisoned for any period not to exceed six (6) months.

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SECTION 8. If any provision or clause of this Ordinance, or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications, of this ordinance and to this end the provisions of each section are declared to be severable.

SECTION 9. This Ordinance shall be in full force and effect from and after its passage, approval by the Mayor and legal publication thereof.

Councilman

Read the first time in full and on motion by Mraus, seconded by
to the Committee on Committee of the Whole (and the City Plan
Commission for recommendation) and Public Hearing to be held after due legal notice,
at the Council Chembers, City-County Building, Fort Wayne, Indiana, on,
theday of, 197, at
o'clock P.M., E.S.T.
Date: 2-26-74 Musliman
Read the third time in full and on motion by Anns,
seconded by Things, and duly adopted, placed on its passage.
Passed (1937) by the following vote:
AYES 4, NAYS , ABSTAINED , ABSENT to-wit:
BURNS X
HINGA X
KRAUS X
MOSES
NUCKOLS X
SCHMIDT, D. X
SCHMIDT, VX
STIER X
TALARICO X
DATE: 4-9-74 CITY CLERK
Passed and adopted by the Common Council of the City of Fort Wayne, Indiana,
as (Zoning Map) (General) (Annexation) (Special) (Appropriation) Ordinance
(Resolution) No. 5-01-74. on the 9th day of gril, 1974.
CITY CLERK CONTROL DANIEL TOLORIOS
Presented by me to the Mayor of the City of Fort Wayne, Ladians, on the
day of April 15, 197 4, at the pair of 11 de clock
M., E.S.T.
Justin William
CITY CLERK
Approved and signed by me this / day of april 10, 1974,
at the hour of 10:30 o'clock P M., E.S.T.
Edward B. Kamuba
MAYOR

Heeld 179

	G-74-03-35	
Bill No.		'
		REPORT OF THE COMMITTEE ON COMMITTEE OF THE WHOLE
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		ce under consideration and beg leave to report back to the Common
Council	that said Ord	inance PASS.
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		Jun misuns.
	Vinfield C. Mo	1100000011 1080000
2	Samuel J. Tala	CONCURRED IN
		CONCORRED IT

# City Clerk Memorandum

To	John Logan, City Council Attorney	Date_	May 2,	1974
From	Charles W. Westerman, City Clerk			

Subject General Ordinance #G-07-74

COPIES TO:

DALHOUN PRIDE

After completing the perusal of Bill #G-74-03-35, General Ordinance G-07-74, an ordinance prohibiting the distribution or exhibition of obscene matters or performances. Said request to the City Clerk to peruse and to obtain legality relating to a number of typographical errors found in said General Ordinance passed by the Common Council on April 9, 1974, and legally signed into law by the acting Mayor, Edward G. Kamnikar, on April 10, 1974, at 10:30 P.M. and attested by Charles W. Westerman, City Clerk.

I am writing to you and to the City Attorney, David B. Keller, for the legal steps to correct said errors that the original ordinance had included at the time of its passage

Said ordinance was received by the Clerk, from the Counci. Attorney and said ordinance corrections regarding errors prior to its passage through legal attorney action.

Said errors remain in the passed bill and my inquiry and legal rulings, request as to what effect these errors might play in the full enforcement and institution of this ordinance

The following errors are noted and possibly more might be found by a more qualified legal scrutiny.

Charlie Westerman

#### CORRECTIONS!

correction: or exhibition of Obscene Matter or Performances

of exhibition of Obscene Matter or Performancaes

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## PAGE #3

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PAGE #1

line 8

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line 11½ copy: One Thousand Dollars (1,000.00) correction: One Thousand Dollars (\$1,000.00)

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Admn.	appr	

## DIGEST SHEET

TITLE OF ORDINANCE General Ordinance G-74-03-35
DEPARTMENT REQUESTING ORDINANCE Winfield C. Moses, Jr Councilman
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SYNOPSIS OF ORDINANCE Phohibiting the distribution or exhibition of obscene matters
or performances.
EFFECT OF PASSAGE Governing obscene matter of ordinance
description of the state of the
EFFECT OF NON-PASSAGE Non-Governing obscene matter of ordinance
MANUEL THEORY OF THE COURSE OF
MONEY INVOLVED (DIRECT COSTS, EXPENDITURES, SAVINGS)
ASSIGNED TO COMMITTEE (PRESIDENT) Augusticus Commettee of the whole



#### CITY OF FORT WAYNE

FORT WAYNE, INDIANA

CHARLES W. WESTERMAN CITY CLERK

April 11, 1974

Miss Helen Libbing Fort Wayne Newspapers, Inc. 600 West Main Street Fort Wayne, Indiana 46802

Dear Miss Libbing:

Please give the attached full coverage on the dates of April 13 and April 20, 1974, in both the News Sentinel and Journal Gazette.

RE: Legal Notice for the Common Council of Fort Wayne, Indiana:
Bill No. Z-73-12-12
Bill No. Z-74-01-10
Bill No. Z-73-12-10

Bill No. Z-73-12-10 Bill No. Z-73-06-11 Bill No. G-74-03-35

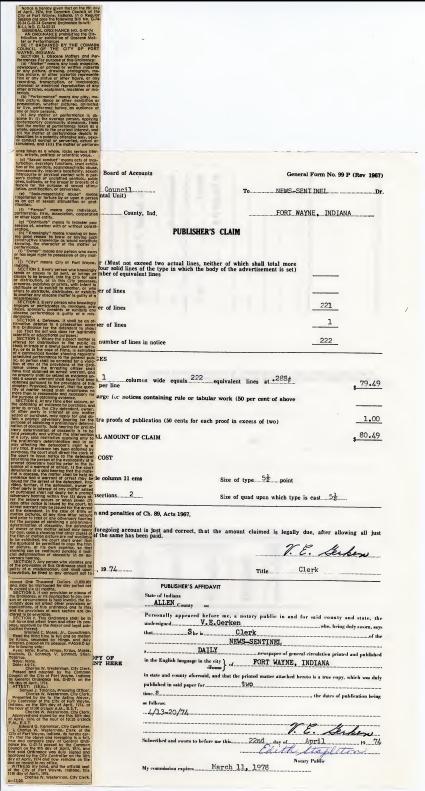
Please send us four (4) copies of the Publisher's Affidavit.

Thank you.

Sincerely,

Charles W. Westerman City Clerk

CWW/ne Encl: 5



Form Prescribed	by State Board of Acc	counts	General Form No. 99 P (Rev 1967)
Fort Wayne	Common Council	-	ToDr.
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ind G. Kamnikar, Cilly C gs W. Westerman, Cle 14 Woyne, Indiana, do he e obove and foregoing complete copy of Gene G-07-74 passed by the the 9th day of April, Ordinance was duly si y the Cily Controller of 11, 1974 and now remai ard in my office.	reby cer-		me this 22nd day of April 19 74
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Appropriate of the day

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